



Massachusetts Law Quarterly

NOVEMBER, 1921

CONTENTS

	PAGE
A BRIEF HISTORY OF THE SUPERIOR COURT OF MASSACHUSETTS . . .	1
PORTRAITS	
OF THE	
CHIEF JUSTICES OF THE SUPERIOR COURT	
CHARLES ALLEN, 1859-1867.	
SETH AMES, 1867-1869.	
LINCOLN FLAGG BRIGHAM, 1869-1890.	
ALBERT MASON, 1890-1905.	
JOHN ADAMS AIKEN, 1905 —	

*Presented at the Annual Dinner
of the
Massachusetts Bar Association, at New Bedford, 1921.*

Issued Quarterly by the
MASSACHUSETTS BAR ASSOCIATION, 60 State St., Boston, Mass.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION,
ETC., REQUIRED BY THE ACT OF CONGRESS
OF AUGUST 24, 1912,

Of Massachusetts Law Quarterly, published quarterly at
Boston, Mass., for October 1, 1921.

Publisher, Massachusetts Bar Association, 60 State Street, Boston, Mass.

Editor, The Publication Committee of the Association.

Managing Editor, FRANK W. GRINNELL, Secretary of the Association.

Business Managers, Same as above.

Owners, Massachusetts Bar Association.

President, Edward W. Hutchins. *Treasurer*, Charles B. Rugg. *Secretary*, Frank W. Grinnell.

Known bondholders and other security holders, none.

FRANK W. GRINNELL.

Sworn to and subscribed before me this 19th day of September, 1921.

ROGER D. SWAIM,
Notary Public.

(My commission expires March 31, 1927.)

[SEAL]

Entered as Second-Class Matter at the Post Office at Boston.

A BRIEF HISTORY OF THE SUPERIOR COURT.

In 1859, a joint special committee of the legislature was appointed to consider the courts. At the beginning of their report (House Document 120 of 1859), they described the then existing system as follows:

"The plan upon which our courts are now organized was established in 1820. The Commonwealth then contained but five hundred and twenty-three thousand two hundred and eighty-seven inhabitants. The theory of the courts then was, that any party was of right entitled to two trials by jury of all questions of fact in all important cases, civil, as well as criminal. The first was in the court of common pleas; either party could then appeal for another trial in the supreme judicial court. This system of trials stood till the year 1840, when Governor Morton went from the bench to the chair of the executive. In his long judicial life, he had seen the mischievous fruits of this system, in its delays and expenses. Upon his recommendation, the legislature of that year took away all right of appeal on questions of fact, and defined the jurisdiction of the two courts. Exclusive jurisdiction was given to the supreme judicial court, of all writs of entry, except to foreclose mortgages, and of all other real actions, respecting easements on real estate, except complaints for flowing lands and actions of trespass on real estate; and of actions wherein the plaintiff or some person in his behalf would make oath, that the matter sought to be recovered exceeded in amount the sum of three hundred dollars, if the action were brought in any county other than Suffolk; and six hundred dollars, if brought in Suffolk county. All other civil actions were left in the court of common pleas. It is apparent, this division of business between the two courts had no respect to the importance of the matters litigated in either, but was based entirely upon arbitrary considerations of convenience.

All questions of law, except upon dilatory pleas, by the same act, were made determinable in the supreme

judicial court. The number of justices of that court was reduced from five to four, and the office vacated by Governor Morton was abolished. Immediately upon the passage of the act, many questions arose upon the jurisdiction of the respective courts. In five several instances legislation has been had to relieve the obscurities and infirmities of this short act thus conferring jurisdiction, and to set out more clearly the matter of which the respective courts should have cognizance. Though nearly twenty years have elapsed since its enactment, the courts are yet busy in determining the powers of the various tribunals under it. And after all these acts of legislation and more than that number of decisions of the supreme court thereon, the law is now in such a state that the commissioners upon the revision of the statutes have found more difficulty, than upon any other subject, in putting these same questions of jurisdiction in an intelligible form into their report."

The legislative committee of 1859, above referred to, then made a new starting point by recommending the abolition of the Superior Court for Suffolk County and the Court of Common Pleas throughout the rest of the state and the creation of a Superior Court for the whole Commonwealth. This recommendation was followed and the present Superior Court came into existence. It was given concurrent jurisdiction in equity with the Supreme Judicial Court in 1883 and in order to relieve that court because of its constantly increasing appellate work, jurisdiction of libels for divorce and petitions for nullity of marriage was transferred to the Superior Court in 1887 and capital cases in 1891, so that for the past thirty years it has been the great trial court of the Commonwealth.

When the Court was created in 1859 it consisted of ten judges, including the Chief Justice. With the increase of work for the Court the number of judges has been increased from time to time and since 1911 there have been twenty-eight judges, including the Chief Justice.

The November number of this magazine for 1920 contained the portraits of all the justices of the Supreme Judicial Court of whom portraits were available since its creation in 1699. A similar portrait history of the great trial court of the

Commonwealth would be interesting, but is not feasible, at present, at least. Portraits of the Chief Justices of that court, however, are here reproduced.

The following biographical information is taken from Davis' "History of the Judiciary of Massachusetts."

CHARLES ALLEN, son of Joseph, was born in Worcester, August 9, 1797. He entered Yale College in 1811 and left at the end of one year, and shortly after entered the law office of Samuel M. Burnside and was admitted to the bar in 1818. He practiced in New Braintree six years, and in 1829, returning to Worcester, became a partner with John Davis. He was a Representative in 1829-1834-1836-1840 and Senator in 1835-38-39, and in 1842 was a member of the Northeastern Boundary Commission. In 1842 he was appointed Judge of the Common Pleas Court and resigned in 1844, in which year he became a member of Congress, serving until 1853. In 1858, on the resignation of Chief Justice Nelson of the Superior Court of Suffolk County, he was appointed his successor. The Court was abolished in 1859 by the Act establishing the Superior Court for the Commonwealth, and he was appointed in that year Chief Justice of the new Court. He resigned his seat in 1867, and died in Worcester, August 6, 1869.

SETH AMES, son of Fisher Ames, was born in Dedham, Mass., April 19, 1805, and graduated at Harvard in 1825. He studied law at the Harvard Law School, in the office of George Bliss in Springfield, and in the office of Lemuel Shaw in Boston and was admitted to the Court of Common Pleas in Dedham in 1828, and to the Supreme Judicial Court in Cambridge in 1830. He began practice in Lowell, was Representative in 1832, Senator in 1841 and City Solicitor of Lowell from 1842 to 1849. In 1849 he was appointed Clerk of the Courts for Middlesex County and removed to Cambridge, and in 1859 was appointed to the bench of the Superior Court of which he was made Chief Justice in 1867. In 1869 he was appointed Judge of the Supreme Judicial Court and removed to Brookline. He resigned his seat January 15, 1881, and died in Brookline, August 15, in the same year.

LINCOLN FLAGG BRIGHAM, son of Lincoln Brigham, was born in Cambridge, October 4, 1819, and graduated at Dartmouth in 1842. He studied law at the Harvard Law School and with John H. Clifford and Harrison G. O. Colby in New Bedford and was admitted to the Bristol bar in 1845. He was for a time a partner of Mr. Clifford and was District Attorney six years. In 1859 he was appointed Associate Justice of the Superior Court and in 1869 Chief Justice, serving until he resigned in 1890. He died in Salem, February 27, 1895.

ALBERT MASON, son of Albert T. Mason, was born in Middleboro, Mass., November 7, 1836, and after studying law in Plymouth was admitted to the Plymouth bar February 15, 1860. He enlisted as a private in the 38th Regiment, was commissioned Second Lieutenant of Company F in that regiment. He served until 1865 as Second Lieutenant, First Lieutenant, Captain and Assistant Quartermaster, and then resumed practice in Plymouth. At a later date he moved to Boston and in 1874 was appointed a member of the Board of Harbor Commissioners, and in 1882 a Judge of the Superior Court, of which he was made Chief Justice in 1890.

JOHN ADAMS AIKEN was born in Greenfield, September 16, 1850, and graduated at Dartmouth in 1874. He was a Representative in 1883. In 1898 he was appointed Judge of the Superior Court. In 1905 he was appointed to the position of Chief Justice and has served in that position ever since.

In these days of uncertainty as to the future of the country it is an interesting and suggestive fact which may well cause reflection on the part of those who are inclined to pessimism, that in 1808 Fisher Ames, the brilliant orator of the early days of the Commonwealth, died obsessed with fears that the excesses of the French Revolution would appear on this side of the Atlantic, and that his children must look forward to "their future servitude to the French." (See Henry Adams' History of the United States, I., 83.) One of those children, Seth Ames, lived to be the Chief Justice of the Superior Court and later a justice of the Supreme Judicial Court in the Commonwealth which stands before the country today, as in the past, for the principles of liberty under law.



Charles Allen

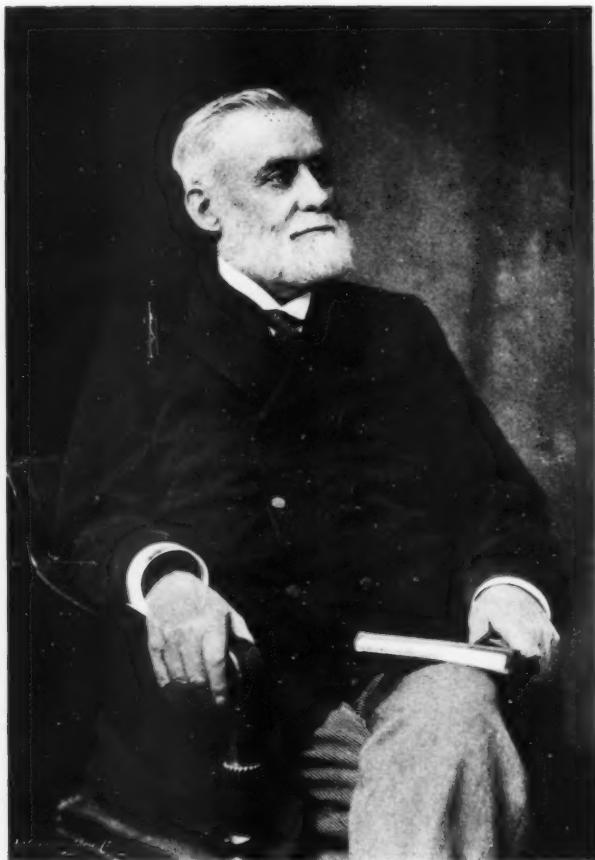
Chief Justice Superior Court, 1859-1867.



SETH AMES.
Chief Justice Superior Court, 1867-1869.



LINCOLN FLAGG BRIGHAM.
Chief Justice Superior Court, 1869-1890.



ALBERT MASON.
Chief Justice Superior Court, 1890-1905.



JOHN ADAMS AIKEN.
Chief Justice Superior Court, 1905—



